



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

CORAM :

The Hon'ble Mr.JUSTICE M.M.SUNDRESH

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A.(MD) No. 441 of 2020

and CMP(MD) No.3149 of 2020

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1. The Deputy Director of Survey & Land Records,
Old Ramanathapuram Collectorate Building,
Madurai - 625 020.
2. The Assistant Director of Survey &
Personnel Assistant (Land Survey) to the District Collector,
Madurai - 625 020.

... Appellants/Respondents

Vs

G. Antonysamy

... Respondent/Writ Petitioner

PRAYER: Petition filed under Clause 15 of Letters Patent Act, to set aside the order, dated 23.01.2020 in W.P.(MD) No.23713 of 2019 and thereby allow the present Writ Appeal.

Prayer in WP(MD). 23713/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus praying this Court Calling for the records of the 2nd Respondent i.e., the Assistant Director of Survey and Land records, Madurai relating to his Memo No.Na.Ka.Ni.A.11/4065/2019 dated 15-10-2019 and quash the same and consequently direct the 1st and 2nd Respondents i.e., the Deputy Director of Survey and Land Records, Madurai and the Assistant Director of Survey and Land Records, Madurai to disburse the Encashment of Leave Salary and Special Provident Fund No.I and II of the petitioner within a specified time frame that may be fixed by this Honourable Court.

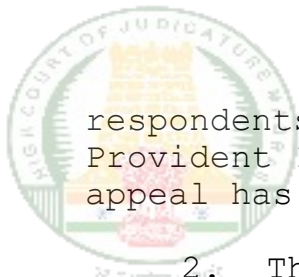
For Appellants/Respondents : Mr.N. Shanmuganathan,
Additional Government Pleader

For Respondent/Writ Petitioner : Mr.S. Visvalingam

ORDER

[Order of the Court was made by **S. ANANTHI, J.**]

This writ appeal has been preferred by the appellants/respondents aggrieved over the order passed by the learned single Judge of this Court, dated 23.01.2020 in W.P.(MD) No.23713 of 2019, by which, the impugned order directing the



respondents to disburse the encashment of leave salary and Special Provident Fund to the petitioner. Challenging the same, the present appeal has been filed.

2. The learned counsel appearing for the respondent/writ petitioner submitted that the petitioner had earlier worked as Draughtsman, Faircopy Section, Collectorate, Madurai, who was suspended from service and he was not allowed to retire from service on the date of his superannuation. He further submitted that he was not paid the encashment of his leave salary and special provident fund and therefore, the petitioner has made a representation to the respondents on 04.10.2019 in this regard and the same was rejected on the ground that the criminal case is pending against him vide memo in *ந.க.ந.அ.11/4065/2019*, dated 15.10.2019.

3. Heard the learned Special Government Pleader appearing for the appellants.

4. Employees contribution to provident fund and accumulated earned leave are properties of the employees, they cannot be held by the employer even if the employee is terminated from service. In this regard, the principles are well settled by this Court and Apex Court in several writ petitions.

5. The Division Bench of this Court in the case of the Chief Secretary to Government Public (Special - A) Department, Fort Saint George, Chennai Vs. M. Uthiraswamy, [W.A. No. 4018 of 219] decided on 22.11.2019] after considering various judgments of this Court and the Hon'ble Supreme Court, has held as under:

"16. Employees contribution to provident Fund and leave which has been earned by him (not encashed) are the property of the employee, they cannot be taken away, without due process of law, as enshrined, under Article 300-A of the Constitution of India. There is nothing in the Rules which has been relied by the learned Government Pleader which will enable the Government to withhold the Employee's own contribution to Provident Fund and encashment of accumulated earned leave when the Government servant has attained the age of superannuation. These amounts have to be given to the Government servant, even if the criminal proceedings culminate against the Government servant and the Government servant is terminated from service. If these amounts cannot be forfeited even on termination, there is no justification in withholding the same during the continuation of criminal proceedings after the Government servant has attained the age of superannuation".



6. Another Judgment passed by the Division Bench of this Court in W.A. No. 207 of 2016, dated 26.02.2016, has held as follows:

" The learned Single Judge, considering all aspets of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encshment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee/writ petitioner may not be entitled to get gratuity. The special provident fund was also not gratned as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner. 5. We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed".

The same was confirmed by the Apex Court in S.L.P. No.16229 of 2016 dated 26.02.2016. It is squarely applicable to this case also.

7. As the leave salary is property to the employee and it cannot be hold by the employer. Regarding special provident fund, if any contribution made by the employee should be disbursed to the employee. Therefore, the respondent/writ petitioner is entitled to get special provident fund what he actually contribute and encashment of leave salary.

8. Finally, this writ appeal stands dismissed with direction to the appellants/respondents to disburse the amounts as found above, within a period of Four Weeks from the date of receipt of a copy of the order. However there is no order as to costs. Consequently, connected miscellaneous petition is closed.

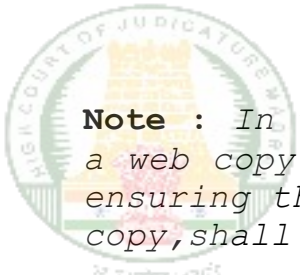
Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)



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+1 CC to M/s.S.VISVALINGAM, Advocate (SR-2294[F] dated 29/01/2021)

+1 CC to M/s.GP (SR-2398[F] dated 29/01/2021)

Order made in
W.A. (MD) No.441 of 2020
27.01.2021

(SJ) CO
AP(10/02/2021) 4P 3C